

Michael S. Agruss (SBN: 259567)  
KROHN & MOSS, LTD.  
10474 Santa Monica Blvd., Suite 401  
Los Angeles, CA 90025  
Tel: 323-988-2400 x235  
Fax: 866-620-2956  
magruss@consumerlawcenter.com  
Attorneys for Plaintiff,  
DELIA MCVICAR

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DELIA MCVICAR,	)	Case No.: '10CV2113 JM JMA
	)	
Plaintiff,	)	COMPLAINT AND DEMAND FOR
	)	JURY TRIAL
v.	)	
	)	(Unlawful Debt Collection Practices)
HUNT & HENRIQUES,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff, DELIA MCVICAR (Plaintiff), by his attorneys, KROHN & MOSS, LTD.,  
alleges the following against Defendant, HUNT & HENRIQUES (Defendant):

**INTRODUCTION**

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692, *et seq.*
2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act (RFDCPA), Cal. Civ. Code §1788, *et seq.*

**JURISDICTION AND VENUE**

3. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court

1 without regard to the amount in controversy,” and 28 U.S.C. 1367 grants this court  
2 supplemental jurisdiction over the state claims contained within.

3 4. Defendant conducts business in the state of California, and therefore, personal  
4 jurisdiction is established.

5 5. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).

6 **PARTIES**

7 6. Plaintiff is a natural person residing in Ramona, San Deigo County, California.

8 7. Plaintiff is a consumer as that term is defined by 15 U.S.C. 1692a(3), and according to  
9 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. 1692a(5)  
10 and Cal. Civ. Code § 1788.2(h).

11 8. Defendant is a debt collector as that term is defined by 15 U.S.C. 1692a(6) and Cal. Civ.  
12 Code §1788.2(c), and sought to collect a consumer debt from Plaintiff.

13 9. Defendant is a collection law firm with a business office in San Jose, California.

14 10. Defendant acted through its agents, employees, officers, members, directors, heirs,  
15 successors, assigns, principals, trustees, sureties, subrogees, representatives, and  
16 insurers.

17 **FACTUAL ALLEGATIONS**

18 11. Defendant is attempting to collect a debt from Plaintiff on behalf of the original creditor,  
19 HSBC Bank, with an account number ending in -2645 (Defendant’s internal Reference  
20 Number assigned to Plaintiff: 271814.001).

21 12. Plaintiff’s alleged debt owed to HSBC Bank, arises from transactions for personal,  
22 family, and household purposes.

23 13. On June 16, 2009, Plaintiff faxed a cease and desist letter to Defendant. *See* Exhibit A.

24 14. On July 16, 2009, Plaintiff faxed a notice of representation letter to Defendant. *See*  
25 Exhibit A.

1 15. Despite receiving Plaintiff's letter (Exhibit A), Defendant communicated with Plaintiff  
2 after July 16, 2009, in an attempt to collect a debt, including but not limited to sending a  
3 letter dated October 12, 2009. *See* Defendant's letter dated October 12, 2009, attached  
4 hereto as Exhibit B.

5  
6 **COUNT I**  
**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

7 16. Defendant violated the FDCPA based on the following:

- 8 a. Defendant violated §1692c(a)(2) of the FDCPA by communicating with Plaintiff  
9 even though Defendant knew Plaintiff was represented by an attorney.
- 10 b. Defendant violated §1692c(c) of the FDCPA by communicating with Plaintiff  
11 after Defendant received Plaintiff's cease and desist letter.
- 12 c. Defendant violated §1692d of the FDCPA by engaging in conduct that the  
13 natural consequences of which was to harass, oppress, and abuse Plaintiff in  
14 connection with the collection of an alleged debt.

15 WHEREFORE, Plaintiff, DELIA MCVICAR, respectfully requests judgment be entered  
16 against Defendant, HUNT & HENRIQUES, for the following:

- 17 17. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15  
18 U.S.C. 1692k,
- 19 18. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,  
20 15 U.S.C. 1692k
- 21 19. Any other relief that this Honorable Court deems appropriate.

22 **COUNT II**  
**DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION**  
23 **PRACTICES ACT**

24 20. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as  
25 the allegations in Count II of Plaintiff's Complaint.

1 21. Defendant violated the RFDCPA based on the following:

2 a. Defendant violated the §1788.14(c) of the RFDCPA by communicating with  
3 Plaintiff even though Defendant knew Plaintiff was represented by an attorney.

4 b. Defendant violated the §1788.17 of the RFDCPA by continuously failing to  
5 comply with the statutory regulations contained within the FDCPA, 15 U.S.C. §  
6 1692, *et seq.*

7 WHEREFORE, Plaintiff, DELIA MCVICAR, respectfully requests judgment be entered  
8 against Defendant, HUNT & HENRIQUES, for the following:

9 22. Statutory damages of \$1,000.00 pursuant to the Rosenthal Fair Debt Collection Practices  
10 Act, Cal. Civ. Code §1788.30(b),

11 23. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection  
12 Practices Act, Cal. Civ Code § 1788.30(c), and

13 24. Any other relief that this Honorable Court deems appropriate.

14 **DEMAND FOR JURY TRIAL**

15 PLEASE TAKE NOTICE that Plaintiff, DELIA MCVICAR, demands a jury trial in this  
16 case.

17  
18 RESPECTFULLY SUBMITTED,

19 DATED: October 11, 2010

KROHN & MOSS, LTD.

20  
21 By: /s/ Michael S. Agruss

22 Michael S. Agruss  
23 Attorney for Plaintiff,  
24 DELIA MCVICAR  
25

# **Exhibit A**

*Debt Counsel for Seniors & the Disabled*



16 June 2009

BY FAX ONLY: 408-362-2299

Page 1 of 3

Hunt & Henriques, ESQ  
151 Bernal Rd. Ste. 8  
San Jose CA 95119

Re: **Delia McVicar**  
**Alleged creditor: HSBC Bank**  
**Your file or reference No.: 271814.001**  
**Our file No.: 11118**

Dear Sir or Madam:

Please be advised that my law firm represents the above-referenced client for the purpose of enforcing their rights against debt collectors under all applicable federal laws.

This letter serves as notice that my client hereby **disputes** the above-referenced alleged debt and requests validation of it in accordance with **15 U.S.C. § 1692g**. Please provide any agreement(s) our client signed with the original creditor, an accounting history showing how you got to the amounts claimed and when this alleged debt was charged off. Unless and until such proof is furnished, we do not recognize any right on your part to attempt to collect any amount from our client through credit reporting or any other means. Moreover, all changes in terms of this alleged debt are hereby objected to and rejected. Please be advised that the continuation of collection activity without adequately responding to these requests may result in a lawsuit against you.

As the client's attorney, I also respectfully inform you that you must **cease** contacting them according to **§§ 1692c(a)(2) AND 1692c(c)** of the Fair Debt Collection Practices Act, since this letter not only serves as notice of our representation of this client but also contains a cease and desist order signed and notarized by the alleged debtor. If and when you violate these statutes, I will not hesitate to pursue all legal remedies on behalf of my client in the United States District Court.

Finally, please be advised that this client is insolvent and cannot afford to file for bankruptcy. They exist exclusively on income from **non-garnishable sources; e.g., social security, disability, veteran's or retirement benefits**. I have also enclosed my client's **affidavit** swearing to this fact. As you should know, this income is protected from execution, levy, attachment, garnishment and other legal process by federal law. The attachment or attempted attachment of these benefits is considered a violation of **§ 1692(f)** of the Fair Debt Collection Practices Act, so please govern your actions accordingly.

Very truly yours,

Jerome S. Lamet, Supervising Attorney  
Debt Counsel for the Seniors and the Disabled  
Cc: Delia McVicar

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Jerome S. Lamet, Supervising Attorney  
The Pontiac Building  
542 South Dearborn  
Suite 1260  
Chicago, Illinois 60605  
V: (312) 939-2221  
F: (312) 939-2741

TRANSMISSION VERIFICATION REPORT

TIME : 06/16/2009 10:58  
NAME : JEROME LAMET LTD  
FAX : 13123563199  
TEL : 13129392221  
SER.# : BRODBJ797996

DATE, TIME  
FAX NO./NAME  
DURATION  
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OK  
STANDARD  
ECM

*Debt Counsel for Seniors & the Disabled*

**DCSD**

16 June 2009

BY FAX ONLY: 408-362-2299  
Page 1 of 3

Hunt & Henriques, ESQ  
151 Bernal Rd. Ste. 8  
San Jose CA 95119

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Our file No.: 11118

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Finally, please be advised that this client is insolvent and cannot afford to file for bankruptcy. They exist

## **Exhibit B**





## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

DELIA MCVICAR,

(b) County of Residence of First Listed Plaintiff San Diego (CA)  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Krohn & Moss, Ltd. Michael S. Agruss (323) 988-2400  
10474 Santa Monica Blvd., Suite 401 Los Angeles, CA 90025

**DEFENDANTS**

HUNT &amp; HENRIQUES ATTORNEY AT LAW

County of Residence of First Listed Defendant San Jose (CA)  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**'10CV2113 JM JMA****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |  | PTF                        | DEF                        |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 USC 1692 et seq.

Brief description of cause:  
Unlawful and abusive debt collection practices

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/11/2010

/s/ Michael S. Agruss

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

Print

Save As...

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Retrieve FDF File

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## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.